SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-914

BELLE FEW THOMPSON, *et al.*,

Petitioners,

v.

MAX SHEPPARD, JR., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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PRELIMINARY STATEMENT

The respondents, Max Sheppard, Jr., et al., respectfully pray that this Court deny The Petition for a Writ of Certiorari to the United States Court of Appeals for

the Fifth Circuit, to review the opinions and judgements of that Court entered in this proceeding on March 8, 1974 and October 25, 1974.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 490 F.2d 830. The opinion of the Court of Appeals denying rehearing is reported at 502 F.2d 1389. The opinion of the District Court of January 12, 1973 is not reported, but is included in the Record at page 38. The order of the District Court of April 17, 1973, is not reported, but is included in the record at page 226.

QUESTION PRESENTED

Whether the present method of jury selection which has produced jury lists with substantial representation of women and blacks thereon, reasonably representing a fair cross-section of the community, operates to exclude identifiable elements within the community?

STATEMENT OF THE CASE

This action was brought pursuant to 43 U.S.C. §1983, to enjoin the alleged systematic exclusion of black and women citizens from service on the grand and petit juries of Dougherty County, Georgia. The plaintiffs are allegedly certain citizens of Dougherty

County, some of whom are allegedly awaiting trial for criminal offenses in the Dougherty County Jail. The defendants are members of the Jury Commission of Dougherty County, the Judge and Clerk of the Superior Court of Dougherty County, and various other officials allegedly involved in the selection and composition of grand and petit jury lists.

This action was filed on November 22, 1972, and a hearing was held before Judge Wilbur D. Owens on January 12, 1973. The District Court entered a preliminary injunction and ordered the Jury Commissioners to compose new grand and petit jury lists for Dougherty County. (38)[1] The order required them to submit these lists, with a written and detailed report of their action within ninety (90) days.

The defendants prepared new lists, and on April 3, 1973, they submitted their reports in compliance with the District Court's order. (42) On April 4, 1973, the District Court issued an order to show cause why the report of the defendants should not be affirmed.

At the hearing on April 17, 1973, the defendants presented the reconstituted grand and petit jury lists to the Court. After consideration of the evidence, the Court concluded that the petit and grand jury lists were recomposed fairly and legally within the standards known to that court, and issued an order accordingly. (226) To this order a notice of appeal to the Fifth Circuit Court of Appeals was filed. (227)

The Court of Appeals affirmed the District Court's

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[1] Numerals in parenthesis refer to pages of the Record of the case, unless otherwise designated.

order approving the reconstituted lists on March 8, 1974; and on October 25, 1974, denied the request of petitioners for rehearing and rehearing en banc. The petitioners filed their petition for a writ of certiorari with this Court on January 23, 1975.

STATEMENT OF FACTS

A. Composition Of Jury Commissioners Of Dougherty County, Georgia.

As required by law, §59-101 of the Code of Georgia, the Board of Jury Commissioners of Dougherty County, Georgia is composed of six (6) persons. Four of this number are white males; one is a black male, and one is a black female. (75)

B. Racial Composition Of Population Over 21 Years of Age Of Dougherty County, Georgia.

According to the 1970 census data, the population of Dougherty County, Georgia over twenty-one years of age was 48,444, consisting of 33,568 white persons and 14,645 black persons, approximately 70% white and 30% black. This population was shown to be approximately 45% male and 55% female. (40)

C. Composition Of The January, 1973 Grand and Petit Jury Lists Of Dougherty County, Georgia.

The petit jury list of Dougherty County, Georgia, in January, 1973, contained 3,221 names, of which there were 2,194 white males, 625 white females, 257 black males, and 145 black females, – approximately 87% white and 13% black, or 76% male and 24% female. (39)

The grand jury list of Dougherty County, Georgia, in January, 1973, contained 614 names, of which there were 462 white males, 86 white females, 49 black males, and 17 black females, – approximately 90% white and 10% black, or 83% male and 17% female. (39)

D. Method Used To Compile The January, 1973 Grand And Petit Jury Lists.

The Board of Jury Commissioners of Dougherty County utilized the registered voters' list of Dougherty County, Georgia used in the last general election (the general election prior to 1972), which list contained 29,204 names. In a series of some sixty-two (62) meetings, the Board of Jury Commissioners considered every name on this list, and from the names on the list they selected persons (a) who were known by one or more of the individual commissioners; (b) who were recommended by one or more jury commissioners after personal investigation; or (c) who were on the most recent preceding jury list. (39)

E. Composition Of The April, 1973 Grand And Petit Jury List Of Dougherty County, Georgia.

There were 2,721 names on the April, 1973 petit jury list, consisting of 1,439 white males, 760 white females, 250 black males, and 271 black females. Percentagewise, the list was approximately 53% white male, 28% white female, 9% black male, and 10% black female (180); or 19.15% black, 80.75% white, and 62.10% male and 37.90% female.

The April, 1973 grand jury list of Dougherty County, Georgia, consisted of 701 names. Of those 701, there were: 392 white males, 194 white females, 59 black males, and 56 black females. (185) Percentagewise, the list was approximately 53% white male, 28% white female, 8% black male, and 8% black female; or 16.3% black, 83.7% white, and 64.5% male and 35.5% female.

F. Method Used To Compile The April, 1973 Grand And Petit Jury Lists.

The Board of Jury Commissioners was advised by the Judge of the Superior Court of Dougherty County, Georgia, that he desired approximately 3,000 names on the petit jury list (168) and approximately 500 names on the grand jury list. (185)

With this request from the Judge of the Superior Court of Dougherty County, Georgia, the Board of Jury Commissioners determined that they would draw every fourth (4th) name on the voters' registration list of Dougherty County as used in the November, 1972 general election; and they had a computer eject every

fourth (4th) card of that voters' registration list. (170) In selecting every fourth name on the voters' registration list, the Board of Jury Commissioners did not know whether they were securing males, females, white, or black persons. (170)

By utilizing this method, the Board of Jury Commissioners had a list of 7,308 names. (171) The Board of Jury Commissioners then mailed a questionnaire to each of the 7,308 persons (173,174), together with a letter of explanation and a self-addressed, stamped envelope for use in returning the questionnaire to the Board of Jury Commissioners. (173,174)

The returned questionnaires were divided into nine (9) categories as follows:

(1) Females not desiring to serve and so indicating; (176)

(2) Occupational exemption; (177)

(3) Over age; (177)

(4) Health reasons; (178)

(5) Illiteracy; (178)

(6) Moved or unknown address with the questionnaire being returned by the United States Post Office; (179)

(7) Students away at college; (179)

(8) Deceased; (180) and

(9) No response to questionnaire. (180)

The names of persons not falling within one of the above categories were automatically included on the petit jury list of Dougherty County, Georgia (180), which in effect made a tenth category into which the questionnaries were divided.

Of the ten categories listed above, the following is a breakdown thereof:

(1) 1,078 females not desiring to serve; (176)

(2) 195 not included because of occupational exemptions; (177)

(3) 224 persons 65 years of age or older; (178)

(4) 228 exemptions for health reasons; (178)

(5) 24 exemptions because of illiteracy; (178)

(6) 1,240 questionnaires returned by the United States Post Office with notation thereon: "Unknown address or moved"; (179)

(7) 102 persons were exempt because they were students and away from Dougherty County attending college; (179)

(8) Nine of the persons on the list were not included because they were dead; (180)

(9) 1,489 persons did not consider jury service to be of such importance as to warrant a return of the questionnaire; (180) and

(10) The remaining 2,721 names composed the petit jury list of Dougherty County as of April, 1973.

The percentage breakdown of the petit jury was approximately 53% white male, 28% white female, 9% black male, and 10% black female. (180) The Board of Jury Commissioners had no idea or knowledge of the racial or sex composition of the jury until after the jury list was completely compiled. (181)

After compiling the petit jury list, the Board of Jury Commissioners then compiled the grand jury list of Dougherty County, Georgia, which ultimately consisted

of 701 names; 392 white males, 194 white females, 59 black males, and 56 black females. In compiling the grand jury list, the Board of Jury Commissioners determined that they would not include anyone with less than a seventh grade education. (210) In addition, the Board of Jury Commissioners, recognizing its duty under the law, attempted to determine from the information contained on the questionnaire whether or not a person was qualified to serve on the grand jury. (213) If any one of the six jury commissioners felt that a person was qualified to serve as a grand juror, that person's name was included on the grand jury list. (218)

The method used by the Board of Jury Commissioners in compiling the January, 1973 jury lists was to take the voters' registration list and consider persons on that list known to the jury commissioners, recommended to the jury commissioners, or whose names were on the last jury list.

The method used in compiling the April, 1973 jury lists of Dougherty County, Georgia was to take every fourth name on the voters' registration list, send questionnaires to every fourth person, and place on the jury list all those persons returning the questionnaire to the Board of Jury Commissioners, unless they were otherwise disqualified from serving under the law of the State of Georgia. There was no necessity that the Jury Commissioners know such person, nor was there any knowledge on the part of the Jury Commissioners as to the racial identity of such person. The April, 1973 jury lists were the result of a random selection procedure.

REASONS FOR DENYING THE WRIT

I.

THE FIFTH CIRCUIT COURT OF APPEALS WAS CORRECT IN FINDING THAT THE APRIL, 1973 JURY LISTS OF DOUGHERTY COUNTY, GEORGIA WERE CONSTITUTIONALLY COMPOSED.

A. The Source From Which A Jury Is Chosen Must Represent A Fair Cross-Section Of The Community.

The present method of jury selection in Dougherty County, Georgia does not operate to exclude any identifiable element of the community. The Fifth Circuit Court of Appeals was correct in affirming the finding of the District Court for the Middle District of Georgia, that the present jury lists were constitutionally composed, and the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit should be denied.

On innumerable occasions our courts have interpreted the Constitution of the United States to prohibit the systematic and deliberate exclusion from the jury service of any class of persons, whether it be by race, creed, sex or national origin. *Strauder v. West Virginia*, 100 U.S. 303 (1880); *Swain v. Alabama*, 380 U.S. 202 (1965); *Carter v. Jury Commission*, 396 U.S. 320 (1970); *Turner v. Fouche*, 396 U.S. 346 (1970); *Alexander v. Louisiana*, 405 U.S. 625 (1972); *Taylor v. Louisiana*, 43 LW 4167 (1975). Although a defendant has no right either to demand that members of his race

be included on the grand jury which indicts him, *Virginia v. Rives*, 100 U.S. 313, 25 L.Ed.2d 667 (1879), or to demand proportionate representation on the jury which tries him, *Swain v. Alabama, supra, Thomas v. Texas*, 212 U.S. 278 (1909), *Taylor v. Louisiana, supra*, he can successfully protect their exclusion by design or intent. Furthermore, one not a member of that excluded class now has standing to assert this exclusion as a violation of his own rights. *Peters v. Kiff*, 407 U.S. 493 (1972). In one of its most recent decisions, this court has said that "the American concept of jury trial contemplates a jury drawn from a fair cross-section of the community." *Taylor v. Louisiana*, 43 LW 4167, 4169 (1975). These principles are well settled; such is not at issue in this case. Rather, the Court is once again presented with a question concerning the application of those principles.

At the initial hearing of this case, the District Court decided that the jury lists did not represent a fair cross-section of the community. Using the registered voter's list from the November 1972 general election, new lists were compiled, pursuant to the Court's order, which increased the representation of women and blacks on the respective juries, as follows:

Petit Jury List

	January List	*April List*	*Percent Increase*
Blacks	12.48%	19.15%	53.44%
Women	24.00%	37.90%	57.91%

Grand Jury List

	January List	*April List*	*Percent Increase*
Blacks	10.70%	16.30%	52.30%
Women	17.00%	35.66%	109.76%

It is apparent from these figures that substantial increases were made in the representation of blacks and women on jury lists.

The figures given by petitioner, which supposedly portray under-representation, distort and magnify the actual representation of the constituent elements, and presuppose a requirement that the composition of the jury lists should be the same as the composition of identifiable elements within the community. Such is not the law, *Swain v. Alabama, supra, Taylor v. Louisiana, supra,* but rather that the method chosen to select jurors does not operate to exclude elements of society from jury service in a systematic manner. A substantial precentage of blacks and female persons were added to the reconstituted jury lists, increasing their number by more than 50% in each case.

These jury lists reasonably reflect the composition of the community, with one of every five petit jurors a black person, while the census shows that blacks over twenty-one represent a little less than one-third of the population. Even after reduction for those desiring not to serve, women represent better than a third of the grand jury list and almost 40% of the petit jury list, while they comprise 50% of the population. This is a favorable and reasonable comparison, reflecting not a deliberate and systematic exclusion of classes, but an

inclusion of all groups and classes within our society. The law demands as much, and with that standard the respondents have complied. The District Court and the Court of Appeals were correct in approving the reconstituted jury list.

B. The Requirement Of A Fair Cross-Section Of The Community Does Not Demand Proportionate Representation Of All Identifiable Elements.

In one of the first cases to consider the question of the exclusion of blacks from jury service, this Court said that purposeful discrimination against Negroes in the selection of juries was a violation of the equal protection clause. *Strauder v. West Virginia, supra.* In almost the same breath, however, the Court in *Virginia v. Rives, supra,* said that a defendant has no right to demand that members of his race be included on the grand jury which indicts him.

This Court again reaffirmed the principle that a defendant is not entitled to a jury containing members of his race almost one hundred years later in *Swain v. Alabama, supra.* However, the Court went a step further and said:

> "But a defendant in a criminal case is not constitutionally entitled to demand a proportionate number of his race on the jury which tries him nor on the venire or jury roll from which petit jurors are drawn. *Virginia v. Rives,* 100 U.S. 313, 322 through 323, 25 L.Ed. 667, 670 through 671; *Gibson v. Mississippi,* 162 U.S. 565, 40 L.Ed.

1075, 16 S.Ct. 904; *Thomas v. Texas,* 212 U.S. 278, 282, 53 L.Ed. 512, 513, 29 Sup. Ct. 393; *Cassell v. Texas,* 339 U.S. 282, 94 L.Ed. 839, 70 Sup. Ct. 629. Neither the jury roll nor the venire need be a perfect mirror of the community or accurately reflect the proportionate strength of every identifiable group. 'Obviously the number of races and nationalities appearing in the ancestry of our citizens would make it impossible to meet a requirement of proportional representation. Similarly, since there can be no exclusion of Negroes as a race, and no discrimination because of color, proportional limitation is not permissible.' *Cassell v. Texas,* 339 U.S. 282, 286-287, 94 L.Ed. 839, 70 Sup. Ct. 629 (opinion of Mr. Justice Reed announcing judgement)." *Swain, supra,* page 766.

This same position has received repeated acceptance in later cases. *Rabinowitz v. U.S.,* 366 F.2d 34, 59 (5th Cir. 1966); *Mobley v. U.S.,* 379 F.2d 768, 772 (5th Cir. 1967); *Carter v. Jury Commission, supra, Smith v. Yeager,* 465 F.2d 272, 274, (3rd Cir. 1972), cert. denied 93 Sup. Ct. 685 (1972). Furthermore, in the recent case of *Taylor v. Louisiana, supra,* Mr. Justice White said:

"It should be emphasized that in holding the petit juries must be drawn from a source fairly representative of the community we impose no requirement that petit juries actually chosen must mirror the community and reflect the various distinctive groups in the population . . . but the jury wheels, pools of names, panels or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof." 43 L.W. 4167, at 4172.

From a fair reading of the cases above cited, it is evident that while the courts interpret the Constitution to require that a jury contains a reasonable cross-section of the community, they do not require it to be proportionately composed of all identifiable groups within the community. The thrust of the petitioner's argument is to the effect that the jury lists should be composed along strict demographic lines, proportionately reflecting the composition of identifiable groups within the community; such is not required by the law. A reasonably representative cross-section of the community does not require proportionate representation of elements within that community.

C. Reasonable Representation Of Identifiable Elements Is Required.

This court has said on numerous occasions that a jury must be a representative cross-section of the community. *Glasser v. U.S.*, 315 U.S. 60 (1942); *Turner v. Fouche, supra; Taylor v. Louisiana, supra.* Indeed, the Georgia Statute itself requires that the commissioners select a "fairly representative cross-section" of the citizens of the county from the registered voters' list.

Neither the Constitution nor the courts require that a jury be composed along proportionate or demographic lines. What is required, is that the jury *reasonably reflect* a cross-section of the community. Mr. Justice Stewart, in writing the majority opinion in *Carter v. Jury Commission, supra,* quoted from *Brown v. Allen,* 344 U.S. 443 (1953), when he said:

> "Our duty to protect the Federal constitutional rights of all does not mean we must or should impose on states our conception of the proper source of jury lists, so long as the source reasonably reflect a cross-section of the population suitable in character and intelligence for that civic duty." 396 U.S., at 332 through 333.

This same sentence was also used by Mr. Justice Douglas in his dissent in *Alexander v. Louisiana, supra.* In fact, Mr. Justice Douglas emphasized the words "so long as the source reasonably reflects a cross-section of the population". Similarly, Mr. Justice White in the decision of *Taylor v. Louisiana, supra,* quoted above, said that whatever the source of the jury, it must not fail to be *reasonably* representative of the community.

It is obvious from a fair reading of the excerpt from *Brown v. Allen,* as well as that case and the above-cited opinions, that the source need not be proportionately representative of the community. If the source is not proportionately representative, then the result obtained from using that source could not be expected to be proportionately representative either. What is required is a reasonable comparison between the source and the community, and a reasonable comparison between the jury list which is obtained from that source and the community. The jury lists presented to the District Court in April reflected a reasonable cross-section of the community.

II.

THE PRESENT METHOD OF JURY SELECTION DOES NOT OPERATE TO EXCLUDE IDENTIFIABLE ELEMENTS OF THE COMMUNITY.

A. The Source Of The Jury Lists Was Not Tainted.

The jury lists presented to the District Court in April, 1973 were the product of an objective system of selection, designed to obtain jury lists without the intervention of human bias. At no step in the selection process did the jury commission inject any personal bias in the compilation of the jury lists. The result was objectively selected petit and grand jury lists reasonably representing a fair cross-section of the community.

The source from which the lists were drawn was not influenced by the bias of any commissioner; it was the registered voters' list of the November 1972 general election. A computer randomly selected every fourth name from that list. The Third Circuit has said in the case of *Smith v. Yeager, supra,* that:

> "In the absence of a randomized procedure, [the jury commissioner] must conform his method of selection to a system that will produce jury lists reasonably approximating that cross-section [of the community]. When such a cross-section is not produced, and the circumstances offer an opportunity for discrimination, it is then his burden to justify his inability to fulfill his duties." 465 F.2d, at 282.

The "key-man" system of selection was used in *Smith v. Yeager* and found to be discriminatory in operation by the facts presented there. In the instant case however, the commissioners began with an unbiased and objective source, and then applied a random and objective procedure to reduce its size. The resulting petit and grand jury lists did not appreciably differ from the composition of the 7,308 names selected by the computer.

This court has said before, in *Brown v. Allen, supra,* and *Taylor v. Louisiana, supra,* – as well as the Fifth Circuit Court of Appeals in *Rabinowitz v. United States,* 366 F.2d 34 (5th Cir. 1966) and *Mobley v. United States,* 379 F.2d 768 (5th Cir. 1967) – that the States may prescribe relevant qualifications for their jurors, so long as the lists are reasonably representative of the community. The use of the voters' registration list as a source for potential jurors does not operate in a suspect fashion to exclude interested persons from jury service. Rather, the voters' list includes all citizens who are so civic-minded and concerned with the public interest as to evidence their desire to participate in the most basic feature of our system of government – the exercise of their right to choose those who will make the laws by which our country functions and which the courts interpret. The use of the voters' list also satisfies the requirement of the Georgia statute that the Board of Jury Commissioners select "intelligent and upright citizens" for jury service, without injecting any human bias on their part. That the statute requires the use of the registered voters' list as a primary source is neither a discriminatory nor irrelevant requirement.

B. The Jury List Was Not Tainted.

From the registered voters' list within the computer, every fourth name was selected. Questionnaires were sent to those persons "kicked-out" by the computer; and a petit jury list was obtained, after elimination of those persons whose questionnaires indicated they were exempted from jury service.

Exemption on request was allowed to those who were engaged in exempted occupations, to women, and to those persons over 65. Such exemptions are allowed by statute.[2] Also those persons suffering from illness or infirmity were allowed exemption, as were students away at school. There were only twenty-four persons eliminated from the 7,308 because they were unable to read, write, speak, or understand English.

It is obvious that little could be done with those persons who had moved or who would not reply to the questionnaire, especially with the 90-day period imposed by the District Court. Such a lack of response automatically must withdraw their name from consideration; but this was not from any subjective bias or intervention on the part of the commission. Even with this reduction, the petit jury was still reasonably representative of the community.

From the petit jury list, the grand jury was selected. The jury commission separated from the petit jury list as potential grand jurors those who had completed the seventh grade. Then they examined the answers given on those questionnaires with regard to the extent of the educational training of an individual and his present

[2]Georgia Code Section 59-112 (1972).

employment. In reviewing this data, the jury commissioners attempted to follow the applicable statute and reduce the petit jury list to a number of persons which could feasibly operate as a grand jury.

This court, as others, has recognized the need for competent jurors. The work of the jury commissioners is circumscribed only when it results in deliberate and systematic exclusion of classes or in consistently under-representative jury lists. The Fifth Circuit Court of Appeals discussed the competing requirements of a fair and impartial jury when it said in *Mobley v. United States, supra*, at 771-2:

> "In compiling jury lists, both the need for competency and for a fair cross-section of the community are important elements, but the desire for competency must not be pursued to the extent that it prevents a fair cross-section and any attempt to gain competent jurors that would result in a less representative cross-section than one drawn from the statutorily qualified pool would destroy the right to serve on juries which Congress intended to confer . . . , and would destroy the broad-based cross-section Congress has designated for federal juries. *Rabinowitz v. United States, supra.*"

While this was written in regard to federal juries, it is equally applicable to those juries selected for use in state courts. Indeed this Court said in *Carter v. Jury Commission, supra,* and *Taylor v. Louisiana, supra,* that the States remain free to prescribe relevant qualifications for jurors, so long as the lists are representative of the community. The competency of jurors is an important consideration, and justifiable as long as it is not used to discriminate against classes of potential jurors. It is evident from the composition of the lists presented here that it was not used discriminatorily.

III.

THE DUTY OF THE JURY COMMISSIONERS WAS FULFILLED.

A jury commission is obligated to select a jury which reasonably reflects a cross-section of the community. The respondent believes that, in accord with the decision of the District Court, it compiled representative lists within bounds of what was possible and practical in the time allowed.

Section 59-106 (1972 Supp.) of the Georgia Code sets forth the statutory duty of the jury commission. The statute says:

> ". . . In composing such list the commissioners shall select a fairly representative cross-section of the intelligent and upright citizens of the county from the official registered voters' list which was used in the last preceding general election. If at any time it appears to the jury commissioners that the jury list, so composed, is not a fairly representative cross-section of the intelligent and upright citizens of the county, they shall supplement such list by going out into the county and personally acquainting themselves with other citizens of the county, including intelligent and upright citizens of any significantly identifiable group in the county which may not be fairly representative thereon. After selecting the citizens to serve as jurors, the jury commissioners shall select from the jury list a sufficient number of the most experienced, intelligent and upright citizens, not exceeding two-fifths of the whole number, to serve as grand jurors. . ."

The respondent believes that a fair and reasonably representative cross-section of the community was placed on the jury list. There was no need to supplement the list from outside sources, nor was this possible in the time allowed for recomposition. No showing was made by petitioners that the voting list was inadequate or that discriminatory voting practices were used in Dougherty County. See, *United States v. Grey*, 355 F.Supp. 529 (W.D. Okla. 1973), *Wright v. Smith*, 474 F.2d 349 (5th Cir. 1973). The commission was endeavoring to compile jury lists objectively and without the intervention of human bias. Of the two available methods of selection, the respondents chose to randomly select the petit jury list. They did so, without regard to race. To have used any other method would have injected an opportunity for discrimination, and would have been impractical in the short time available to prepare these lists.

In *Mobley v. United States, supra,* the Fifth Circuit Court of Appeals said:

> "There is, therefore, an affirmative duty imposed by the Constitution and laws of the United States upon the jury selection officials – jury commissioner and Clerk of Court – to know the availability of elements of the community, including those which have been the object of state discrimination, to develop and use a system that will result in a fair cross-section of qualified persons in the community being placed on the jury rolls and to follow a procedure which will not operate to discriminate in the selection of jurors on racial grounds." 379 F.2d, at ____.

While this statement was made in connection with the selection of federal juries, it is a fair statement of the

duty expected of any jury commission. The respondents firmly believe that their present system of jury selection, the objective method used to select these jury lists, will continue to produce constitutionally acceptable jury lists. They believe that the present jury lists are fairly and reasonably representative of the community, without discrimination of any class. Therefore, they believe that their duty has been fulfilled.

CONCLUSION

In conclusion, it is respectfully submitted that the evidence in this case demands affirmance of the opinion of the Court of Appeals of the Fifth Circuit. This court has consistently said that juries and jury lists need not be composed along proportionate or demographic lines. All that is required is that the jury list reasonably reflect a cross-section of the community, and with that standard the respondents have complied.

The decision of the Court of Appeals for the Fifth Circuit should be affirmed in all respects.

Respectfully submitted,

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